

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING
EN BANC**

77-2079

UNITED STATES COURT OF APPEALS

FOR THE
SECOND CIRCUIT

-----x
UNITED STATES OF AMERICA, ex rel.
DER-RONG CHOUR,

Petitioner-Appellant

-v-

BENEDICT J. FERRO, District Director,
Immigration and Naturalization Service,
Buffalo, New York; IMMIGRATION AND
NATURALIZATION SERVICE,

Respondent-Appellees :

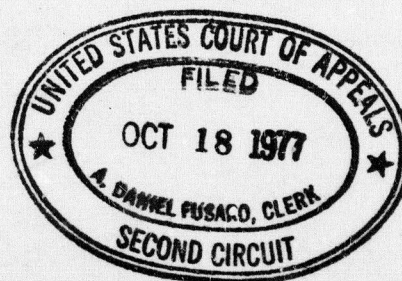
B
P/S
Docket Nos.

:
:
77-2074
77-4136
:
:

-----x
BRIEF IN SUPPORT OF MOTION
FOR RECONSIDERATION AND
SUGGESTION FOR REHEARING
EN BANC

LAW OFFICES OF DAVID C. BUXBAUM, P.C.,
Attorney for Petitioner-Appellant

11 Broadway, Suite 1612
New York, New York 10004
(212) 425-4347



UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

----- x

UNITED STATES OF AMERICA, ex rel.	:	
DER-RONG CHOUR,	:	
Appellant,	:	
-v-	:	Docket Nos.
BENEDICT J. FERRO, District Director,	:	77-2074
Immigration and Naturalization Service,	:	77-4136
Buffalo, New York, or any other person	:	
having the said petitioner in his custody,:	:	
IMMIGRATION AND NATURALIZATION SERVICE,	:	
Appellees.	:	
----- x	:	

BRIEF IN SUPPORT OF MOTION
FOR RECONSIDERATION AND
SUGGESTION FOR REHEARING
EN BANC

LAW OFFICES OF DAVID C. BUXBAUM, P.C.
Attorneys for Appellant

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New York, N.Y. 10004
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UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

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UNITED STATES OF AMERICA, ex rel.
DER-RONG CHOUR,

Appellant,

- v -

Docket No. 77-2074

BENEDICT-J. FERRO, District Director, Immigra-
tion and Naturalization Service, Buffalo,
New York, or any other person having the said
petitioner in his custody; IMMIGRATION AND
NATURALIZATION SERVICE,

Appellees.

-----X
DER-RONG CHOUR,

Appellant,

- v -

Docket No. 77-4136

BENEDICT-J. FERRO, District Director, Immigra-
tion and Naturalization Service, Buffalo,
New York, IMMIGRATION AND NATURALIZATION SERVICE,:

Appellees.

-----X
BRIEF IN SUPPORT OF MOTION FOR
RECONSIDERATION AND SUGGESTION
FOR REHEARING EN BANC

I. PRELIMINARY STATEMENT

The panel of Hons. J. Joseph Smith, Walter R. Mansfield and James L.
Oakes have sounded the death knell for procedural due process for thousands of

aliens subject to deportation hearings, in callous disregard of appellant's rights and this Circuit's prior holdings.

If allowed to stand, this decision will set a nation-wide precedent for deporting aliens never before subject to deportation without a semblance of due process, using procedures bearing no resemblance to those mandated by statute and regulation, depriving untold numbers of aliens of their opportunity to adjust their status from nonimmigrant crewman, an opportunity kept open as a matter of administrative policy to date. By singling out appellant and depriving him alone of this long established privilege, at the very least the panel has given respondents carte blanche to ignore every procedural safeguard promulgated to preserve fundamental fairness in deporting any given alien.

Cavalierly dismissing the instant appeal from the bench, refusing to stay the deportation order despite appellant's expressed intention to file a petition for writ of certiorari, the panel even deprived appellant of his right to effectually file a reply brief by refusing to postpone oral argument from October 12, 1977. This was only seven days after appellant received the answering brief of appellees on October 5, 1977, three of which days the court was closed.

That the court characterized the present record from the bench as one in which "all rights were given" is, with all due respect, shocking. The district court itself, while dismissing the habeas corpus petition on jurisdictional grounds, listed a litany of regulation violations, all of which were conceded by appellees with but the frailest attempt at excuse in its answering brief, a document which was little more than a compendium of miscitations and gross distortions of law of this Circuit and the Supreme Court. The brief was but an example of misconduct which has denigrated the instant appeal from its inception.

II. STATEMENT OF FACTS

Appellant respectfully refers the Court to the counterstatement of facts previously submitted in appellant's reply brief, a copy of which is attached hereto as Exhibit "A".

III. ARGUMENT

- A. The Court has Sanctioned Appellees' Knowing Misreading of 8 U.S.C. § 1255, Wholly Ignored Normal Re-entry Procedures for Initially Nonimmigrant Crewmen, and Worked Patent Invidious Discrimination on Appellant.
-

The appellees claimed that appellant cannot adjust his status pursuant to 8 U.S.C. § 1255. The appellees' brief states: "As is apparent from the Act, Chour, an alien crewman, is statutorily ineligible to obtain adjustment of status relief." (p. 34)

In fact, 8 U.S.C. § 1255 does not say that an alien crewman is prohibited from adjusting his status, and indeed, the Attorney General is at this very moment evaluating appellant's eligibility for such adjustment.

8 U.S.C. § 1255 provides:

The status of an alien, other than an alien crewman, who was inspected and admitted or paroled in the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe. . . . 8 U.S.C. § 1255(a).

The status change is thus not prohibited, rather the Attorney General is not permitted to change the status, which is not dispositive of the appellant's type of case.

The exhibits attached hereto reflect the normal documentations submitted in such a case. The deportation is typically stayed pending the evaluation of the eligibility for adjustment of status, in this case on the three grounds of refugee status and marriage to a resident (see Exhibits A and B), and a sixth preference labor certification presented to the Board of Immigration Appeals on the Motion to Reopen. (A-24)

An alien crewman adjusts his status to that of nonimmigrant person admitted for permanent residence by processing his application through the Immigration and Naturalization Service, and if necessary, first through the Labor Department, and after a favorable adjudication in the United States, to adjust his status outside the United States at an American Embassy or Consulate either in his home country, or in Canada.

An I-485 form is sent to a consulate, normally Canada, with the petition for adjustment of status as approved by the INS. The crewman then goes to the consulate, the consulate gives him a visa, and the resident card is issued by the Canadian Consul while petitioner is in Canada, or by mail upon his return to the United States. This procedure complies with the plain language of federal law, as the Secretary of State is empowered to establish and administer a visa office (8 U.S.C. § 1104(b)(c)), to enforce relevant immigration and nationality laws except those conferred upon consular officers relating to the granting of visas (8 U.S.C. § 1104(a)).

Under the Code of Federal Regulations:

(a) An alien shall be classified as a sixth preference immigrant under section 203(a)(6) of the Act if the consular officer has received from the Immigration and Naturalization Service a petition filed on the applicant's behalf by a prospective employer and validly approved in accordance with section 204 of the Act. 22 C.F.R. 42.35. (emphasis supplied)

A person entering the United States as a seaman or crewman is thus not ineligible to obtain an immigrant visa from a consular officer under these provisions of the Code. (See, Alien Ineligible to Receive Visas, 22 C.F.R. § 42.91.) The alien-appellant is eligible to receive a visa pursuant to a sixth preference application filed by a prospective employer. Such application requires the certification by the Secretary of Labor that there are insufficient qualified American workers for the job and the employment of said alien will not adversely affect wages of American

workers (22 C.F.R. 42.91(14)). Documents evidencing the processing of the labor certification in this case was presented to the Board of Immigration Appelas, who failed to consider it in their decision. This practice, which is common and is employed by alien crewmen, is clearly available to the appellant in this case, and he, like immigrant seamen before him, normally adjust their status and lawfully remain in the United States pending said adjustment. (Exhibits B and C)

The instant case is all the more appalling as appellant is not only awaiting eligibility for a sixth preference, he is presently married to a resident. (See Exhibit B), and he is a refugee originally saved by American military authorities from the hands of the communists who seized control of the island where he lived. (Exhibit C).¹

Exhibit B-1 is the "Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa" [form I-130] which is directed "to the Secretary of State" (p. 2, Ex. A-1) and includes the explicit notation that appellant will apply to the American Consulate in Montreal, Canada for the visa.

Exhibit B-2 is appellant's Marriage Certificate and Exhibit B-4 and B-5 verify that appellant's spouse is a resident alien, rendering appellant eligible for a second preference. 22 C.F.R. § 42.35.

These documents were submitted on September 28, 1977, and were accepted for processing on September 30, 1977 by the appellee, as is verified by the return receipt signed by the "I-130" section of the INS. (See, Exhibit B, p. 2).

Similarly, appellee has accepted the I-539 application of appellant and is processing it to determine appellant's refugee status. (See, Exhibit C, p. 2).

That appellee INS chose to mislead the court with its gloss of 8 U.S.C. § 1255 was plain misconduct.

¹/ Appellant was evacuated from Ta-Chen Island, off the coast of Chekiang Province, China, under control of the communists since 1955. His evacuation was in part at the behest of the American military authorities. Petitioner would be subject

B. Appellant Was Stripped of Every Regulatory, Statutory and Constitutional Safeguard Designed to Protect Aliens from the Very Events Occurring Herein.

Never before has any Circuit sanctioned the wholesale de facto repeal of every regulation promulgated by the INS to prevent the very events that have here occurred.

The District Court Judge, while dismissing the Habeas Corpus proceedings on jurisdictional grounds, found:

. . . I see no place in the transcript where the petitioner was advised that he would have a reasonable opportunity to examine and object to the evidence against him, to present evidence on his own behalf and to cross examine witnesses presented by the government. (A-81-82)

The judge thus lists plain violations of 8 C.F.R. § 242.16 (See, Exhibit D [Regulations], which the panel equated with affording appellant "all of his rights", and which appellees attempt to sidestep by arguing that a prior written appraisal of the right to counsel directed at petitioner a month before the hearing, as it appears in English on the reverse side of the Order to Show Cause, fulfills the regulation. This written notice was supposedly translated "verbatim" to petitioner with the same efficacy that has produced two materially contradictory transcripts of the deportation hearing to date. Such "notice" in any event could not have survived the judge misinforming appellant that he was not "authorized" to obtain counsel, a plain misstatement of the applicable regulation and a misstatement which appears in the transcript conveniently not shown to the District Court until appellant's counsel brought it to its attention. (Compare, Exhibit E and Exhibit F; see, A-57).

This purported "waiver" of the right to counsel as reflected in two mutually contradictory transcripts of the deportation hearing is nonsensical, and

(footnote continued from previous page) --

to imprisonment and thought reform if returned. Petitioner is thus eligible for a seventh preference application as defined in § 203(a)(7) of the Immigration and Nationality Act of 1952, as amended.

flies flush in the face of this Court's holding that where there is no "clear waiver" of the right to counsel the constitutional defectiveness of the entire hearing must be "reached".²

To reach the question of the extent of petitioner's statutory and constitutional rights to counsel, however, we would have to find that she did not herself waive any such rights.

There is nothing approaching a "clear waiver" in this case.

Moreover, the appellant was totally ignorant of his eligibility to adjust his status and would have never been at the deportation hearing had an attorney represented him. This ignorance of the law must fall with that class of cases noted by this Court in Ballenilla-Gonzalez v. INS.

... We are not prepared to state that every waiver of a right to counsel given under a misapprehension of the state of the law must be upheld as valid.

Not only was there no waiver, not only was the entire panoply of rights not given to appellant, as found by the lower court, but appellant's ignorance was the only factor which led him to "admit" to his supposed immutable deportability, which was simply not the immutable result appellees have misled this Court to believe, as has been demonstrated.

It is perversely fitting that these proceedings were garnished by the appellees' adding to the Administrative Record a document not seen before, purporting to reflect that the appellant had his regulatory rights read to him a month before the hearing by a translator purportedly as efficient as that which has produced two materially contradictory transcripts to date.

^{2/} Appellees' argument that this Circuit has adopted a "prejudice rule" under which absent "prejudice" the right to retain counsel cannot reach constitutional dimension, was expressly not ruled upon by this Court in Ballenilla-Gonzalez v. INS, 546 F.2d 515 (2d Cir. 1976).

C. Appellees' Misconduct

(1) Appellees' Failure to Obey Judge Port's Order and Manipulation of Transcripts

On June 15, 1977, Judge Port ordered appellees to produce a certified record for purposes of the Habeas Corpus hearing of June 29, 1977 and submit it to appellant's attorney who entered the case in early June. (A-53; Habeas Corpus transcript, p. 3).

Ignoring the order, appellees produced no certified record but submitted two materially contradictory transcripts on the day of the hearing itself, providing Judge Port with the less damaging version (reflecting appellant being advised he was not "forced" to have an attorney) (see, A-52 et seq.) and provided appellant with the more damaging version (reflecting appellant being advised he was not "authorized" to have an attorney). (See, A-52 et seq.) This tactic of ambush robbed appellant of an opportunity to present the case coherently to the district court below and worked an invidious discrimination against appellant by depriving him of a chance to process his appeal on record. See, Griffin v. Illinois, 351 U.S. 12 (1951).

(2) Appellees' Failure to Obey Staff Counsel Fensterstock's Order Resulted in Rushing the Scheduling of This Case and Precluded the Panel From Reading the Appellant's Reply Brief

At the pre-argument conference, Staff Counsel Fensterstock noted the wholesale deprivation of regulations and statutory rights of petitioner at the deportation hearing and specifically ordered appellees to (a) inquire of the Washington office as to whether the INS wished to proceed in the instant case and (b) to report back to Mr. Fensterstock the results of such inquiry.

Appellees pointedly ignored both these Court orders, Mr. Fensterstock having set down the case for argument on October 12, 1977 in reliance on compliance with his orders.

(3) Appellees' Attempt to Cut Off Appellate Routes of Appeal

Appellees issued its deportation order less than twenty-four (24) hours after this Court denied the appeal from the bench, notice of which order reached counsel for appellant less than forty-eight (48) hours before the scheduled deportation of appellant on October 19, 1977.

This tactic has forced appellant to file his motion for reconsideration within hours instead of weeks and to move this Court and the United States Supreme Court for a stay of the deportation proceedings with minimal time for preparation. It is wholly unnecessary harassment designed to eviscerate the efficiency of this appellate procedure.

IV. CONCLUSION

Wherefore, appellant respectfully requests that the referenced panel's ruling from the bench of October 12, 1977 be reconsidered and reheard en banc.

Dated: New York, New York
October 17, 1977

Respectfully submitted,

LAW OFFICES OF DAVID C. BUXBAUM, P.C.
Attorneys for Appellant
11 Broadway, Suite 1612
New York, New York 10004
(212) 425-4347

Of Counsel:

David C. Buxbaum

II. COUNTERSTATEMENT AND DIFFERENTIATION
OF FACTS AS CONSTRUED BY RESPONDENT

A. Materially Contradictory Transcripts Cannot
Be Glossed as "Substantially Correct".

That respondents choose in their Statement of Facts (Respondents' Brief, p. 3, et seq.) to ignore materially contradictory transcripts of the deportation hearing by divining that Judge Port "concluded" that petitioner was aware of his right to retain counsel "irrespective of which transcript is correct" (Respondents' Brief, p. 6, n. 9) and further choose to buttress their divinations by references to private conversations presumably between an Assistant U. S. Attorney and an interpreter that the transcripts are "substantially correct" (references in patent

(1) The instant appeal does not pertain to petitioner's alleged failure to file alien address cards (Respondents' Brief, p. 5, n. 7), alleged failure to seek prior approval of the respondents before seeking employment in this country (Respondents' Brief, p. 3, n. 3) [But see, Wandering Between Two Worlds: Employment Discrimination Against Aliens, 16 Va. J. of Int'l L. 355 (1976); M. Coolidge, Chinese Immigration (1909)] or various descriptions of petitioner as "surfacing" here or there.

violation of this or any appellate court's rules which limit litigants to a record) (Id.) can only be termed playing fast and loose with the present record and no species of simple persuasive argument, as is further borne out below.

B. "Undisputed" Waivers

The respondents' claim that petitioner's response to the Judge's garbled expression of petitioner's right to retain counsel is "undisputed" (Respondents' Brief, p. 6, n. 9) and that somehow the "indisputability" of the response to the garbled expression of the right transmutes to the indisputability of the Judge's initial expression of petitioner's right to retain counsel is nonsensical.

Petitioner's "indisputable" response to the garbled expression of his right to retain counsel uses the very syntax that the Judge used in presenting the misstatement of the law to petitioner, potentially confirming petitioner's misunderstanding of the rights which were his. The Judge purportedly said in one transcript, "you are not authorized to have such a person [an attorney], you can go ahead without one and speak for yourself." Petitioner, using the same language and syntax, responded, "I will speak for myself."²

The truly indisputable alternatives presented to petitioner were to proceed without counsel, as he was not "authorized" to have

(2) The translation process itself, (1) the Judge's language being translated into Chinese, (2) expressed to petitioner, (3) petitioner's Chinese response, (4) finally translated into English, is a delicate procedure at best if meanings are not to be lost. With two contradictory versions, it strains credulity to expect a translator to once again translate conversations which occurred two years ago with any semblance of accuracy.

one, but, nevertheless, to "speak for himself", or, in the alternative, to proceed without an attorney and say nothing. To further conjure that this exchange constitutes a knowledgeable, intelligent, or voluntary waiver is a veneer and strategy based on obfuscation of facts.

That respondents offer to reproduce a third transcript for this Court as respondents stated they would, but failed to do, prior to the Habeas Corpus Hearing, insults the integrity of this appeal. It further evidences respondents' own admission that they failed to comply with the strict statutory mandate that "[d]etermination of deportability in any case shall be made only upon a record," 8 U.S.C. § 1252(b), not upon the United States Attorney's crystal ball gazing.

September 28, 1977

United States Department of Justice
Immigration and Naturalization Service
26 Federal Plaza
New York, NY 10007

Attn: I-130 Section

Re: CHOUR, Der-Rong
A15 196 857

Dear Sir/Madam:

Enclosed are the following forms and supporting documents with regard to the application of Jin, Hsien Chiao for her husband's immigrant visa.

1. Executed Form I-130
2. Certificate of Marriage issued by Deputy City Clerk of the City of New York, Borough of Manhattan
3. A Copy of JIN, Hsien Chiao's Green Card (To prove lawful permanent resident of petitioner)
4. A check in the amount of \$10.00
5. Executed Form G-28 (Notice of Appearance)

We would appreciate your early attention to this matter.

Thank you.

Very truly yours,

LAW OFFICES OF DAVID C. BUXBAUM, P.C.

DCB:ttc

Enclosures

By: DAVID C. BUXBAUM

"B"

● SENDER: Complete items 1, 2, and 3. Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☐ Show to whom and date delivered25¢
☐ Show to whom, date, & address of delivery45¢
☐ RESTRICTED DELIVERY.
☐ Show to whom and date delivered85¢
☐ RESTRICTED DELIVERY.
 (Fees shown are in addition to postage charges and other fees). *BC-0281 check Per-Renf.*

2. ARTICLE ADDRESSED TO:
*144 E-130 Sec.
 26 Federal Plaza
 New York, NY 10007*

3. ARTICLE DESCRIPTION:
 REGISTERED NO. *978303* CERTIFIED NO. *111* INSURED NO. *111*

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE *[Signature]* ☒ Addressee ☐ Authorized agent

4. DATE OF DELIVERY *1976 NOV 11* POSTMARK *NEW YORK 11*

5. ADDRESS: *26 Federal Plaza
 New York, NY 10007*

6. UNABLE TO DELIVER BECAUSE: *[Blank]* CLEARY'S INITIALS *[Blank]*

3811, Nov. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

PS Form 3800, Apr. 1976 *Check Per-Renf*

SENT TO *EMS 1112 Section*

STREET AND NO. *26 Federal Plaza*

P.O. STATE AND ZIP CODE *New York NY 10007*

POSTAGE \$ *1.00*

CERTIFIED FEE \$

SPECIAL DELIVERY \$

RESTRICTED DELIVERY \$

RETURN RECEIPT SERVICE \$

SHOW TO WHOM AND DATE DELIVERED \$

SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY \$

SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY \$

SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY \$

TOTAL POSTAGE AND FEES \$

POSTMARK ON DATE *NEW YORK 11*

RECEIPT FOR CERTIFIED MAIL

No. 978303

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

BC-0281 (See Reverse)

Do not leave any questions unanswered. When appropriate, insert "none" or "not applicable".
If you need more space to answer fully any questions on this form, use a separate sheet of paper this size and identical to this answer with the number of the corresponding question.

U.S. GOVERNMENT PRINTING OFFICE: 1977-224-403

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

Form Approved
OMB NO. 43-RD 401

PETITION TO
CLASSIFY STATUS OF
ALIEN RELATIVE FOR
ISSUANCE OF
IMMIGRANT VISA

PLEASE NOTE
YOU ARE THE PETITIONER
AND YOUR RELATIVE
IS THE
BENEFICIARY

Fee Stamp

Name of beneficiary (Last, in CAPS) (First) (Middle) CHOUR Der-Rong		2. Do Not Write in This Space	3. Names, birthdates and countries of birth of beneficiary's children: None
Other names used: (including maiden name if married) RONG DER CHOUR			
Country of beneficiary's birth China	5. Date of beneficiary's birth (Month, day, year) 9-8-46		
My name is: (Last, in CAPS) (First) (Middle) JIN, Hsien Chiao	8. My phone number is: 939-6678		
Other names used: (including maiden name if married woman) None		10. Relationship of beneficiary to myself husband	
I was born: (Month) (Day) (Year): 2-1-57 in: (Town or city) (State or Province) (Country) Keelung Taiwan CHINA			
If you are a citizen of the United States, give the following: a. Citizenship was acquired: (Check one) ☐ through birth in the U.S. ☐ through parents ☐ through naturalization ☐ through marriage (1) If acquired through naturalization, give name under which naturalized, number of naturalization certificate, and date and place of naturalization: (2) If acquired through parentage or marriage, have you obtained a certificate of citizenship in your own name? (a) If so, give number of certificate and date and place of issuance: (b) If not, submit evidence of citizenship in accordance with instruction 3 a (2)			
If you are a lawful permanent resident alien of the United States, give the following: a. Alien Registration Number: A-36 335 448 b. Date, place, and means of admission for lawful permanent residence 6-15-77 SFR P-2			
Beneficiary's marital status: ☒ Married ☐ Widowed ☐ Divorced ☐ Single		15. Name of beneficiary's spouse, if married, and date and country of birth (Omit this item if petition is for your spouse) Omit	
Full address of beneficiary's spouse and children, if any (Omit this item if petition is for your spouse) Omit			
If this petition is for your spouse or child, give the following: a. Date and place of your present marriage 9-28-77 Has this beneficiary ever been in the U.S.? ☒ YES ☐ NO Are beneficiary and petitioner related by adoption? ☒ YES ☐ NO			
Names of my prior spouses N/A		Names of beneficiary's prior spouses N/A	

CONTINUE WITH ITEM 20 ON REVERSE

OATH OR AFFIRMATION OF PETITIONER

we (affirm) that I know the contents of this petition signed by me and that the statements herein are true and correct.

Signature of petitioner (See instruction No. 5)

Subscribed and sworn to (affirmed) before me this **28th** day of **Sept.** **AD 1977** at **11 Broadway, Suite 1612 NYC**

(SEAL) My commission expires

(SIGNATURE OF OFFICER ADMINISTERING OATH) **DAVID C. RUSBAUM** NOTARY PUBLIC, State of New York

SIGNATURE OF PERSON PREPARING FORM IF OTHER THAN PETITIONER's Country **79**

I declare that this document was prepared by me at the request of the petitioner and is based on all information of which I have any knowledge.

(SIGNATURE)

(ADDRESS)

(DATE)

TO THE SECRETARY OF STATE:

The petition was filed on _____

The petition is approved for status under section:

- ☐ 201 (b) SPOUSE, CHILD ☐ 203 (a) (2)
- ☐ 201 (b) PARENT ☐ 203 (a) (4)
- ☐ 203 (a) (1) ☐ 203 (a) (5)

DATE
OF
ACTION

DD

DISTRICT

REMARKS

- ☐ PERSONAL INTERVIEW CONDUCTED
- ☐ DOCUMENT CHECK ONLY
- ☐ FIELD INVESTIGATION COMPLETED
- ☐ APPROVAL PREVIOUSLY FORWARDED

REMARKS (Continued)

(PETITIONER IS NOT TO WRITE ABOVE THIS LINE)

20. Check the appropriate box below and furnish the information required for the box checked:

- ☒ Beneficiary will apply for a visa abroad at the American Consulate in Montreal, Canada
(CITY IN FOREIGN COUNTRY) (FOREIGN COUNTRY)
- ☐ Beneficiary is in the United States and will apply for adjustment of status to that of a lawful permanent resident in the office of the

Immigration and Naturalization Service at _____

(CITY)

(STATE)

If the application for adjustment of status is denied, the beneficiary will apply for a visa abroad at the American Consulate in _____

(CITY IN FOREIGN COUNTRY)

(FOREIGN COUNTRY)

21. My residence in the United States is: (C/O, if appropriate) (Apt. No.) (Number and Street) (Town or city) (State) (ZIP Code)

41-25 Kissena Blvd. Apt. 3L Flushing, New York 11355

22. My address abroad (if any) is: (Number and street) (Town or city) (Province) (Country)

None

23. Last address at which I and my spouse resided together (Town or city) (State or Province) (Country) (Apt. No.) (Number and street) (Month) (Year) (Month) (Year)

41-25 Kissena Blvd. Apt. 3L Flushing, NY 11355 - Sept - 77 - Present

24. Address in the United States where beneficiary will reside (City) (State)

41-25 Kissena Blvd. Apt. 3L Flushing, NY 11355

25. Address at which beneficiary is presently residing (Apt. No.) (Number and street) (Town or city) (Province or State) (ZIP Code)

41-25 Kissena Blvd. Apt. 3L Flushing, NY 11355

26. If this petition is for a child, (a). Is the child married? N/A (b). Is the child your adopted child? N/A If so, give the names, dates, and places of birth of all other children adopted by you. If none, so state.

27. If this petition is for a brother or sister, are both your parents the same as the alien's parents? N/A If not, submit a separate statement giving full details as to parentage, dates of marriage of parents, and the number of previous marriages of each parent.

28. If separate petitions are also being submitted for other relatives, give names of each and relationship to petitioner.

N/A

29. Have you ever filed a petition for this alien before? No If so, give place and date of filing and result.

30. If beneficiary is in the United States, give the following information concerning beneficiary:

(a) Last arrived in U.S. On (Month) (Day) (Year)

Feb. 19, 1974

(b) Last arrived in U. S. as

(Visitor, student, exchange alien, crewman, stowaway, etc.)

Crewman

(c) Date beneficiary's stay expired or will expire as shown on his Form I-94 or I-95

(d) Name and address of present employer

(e) Date alien began this employment

(legib)

(prop)

No 42129

THE CITY OF NEW YORK
OFFICE OF CITY CLERK
MUNICIPAL BUILDING, MANHATTAN

Marriage License
No 16538 1927

Certificate of Marriage

I, Henson F. Ryan, duly designated by the City Clerk of the City of New York to solemnize marriages, Do Hereby Certify that I did solemnize the rites of matrimony at the Office of the City Clerk, in the Borough of Manhattan, City of New York, State of New York between DEE-RONG CHOW of FLORIDA

in the County of QUEENS State of N.Y.
AND

ASIEU - CHIAO TAN of FLORIDA
in the County of QUEENS State of N.Y.
in the presence of C. W. K. Yu
and _____ as witnesses.



Witness my hand this date, Feb. 28, 1927 at the Office of the City Clerk,
Borough of Manhattan, City of New York, State of New York.

Albert J. Ryan
Deputy City Clerk of the City of New York, Borough of Manhattan

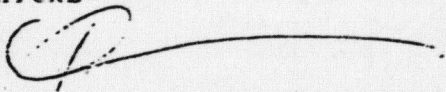
NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

In re: CHOUR, Der-Rong.	DATE 9-28-77
	FILE No. A15 196 857

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s):

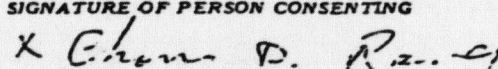
NAME CHOUR, Der-Rong	☐ Petitioner ☒ Beneficiary	☐ Applicant ☐
ADDRESS (Apt. No.) 41-25 Kissena Blvd. Apt. 3L	(Number & Street) Flushing	(City) New York (State) 11355 (ZIP Code)
NAME JIN, Hsien Chiao	☒ Petitioner ☐ Beneficiary	☐ Applicant ☐
ADDRESS (Apt. No.) 41-25 Kissena Blvd. Apt. 3L	(Number & Street) Flushing	(City) New York (State) 11355 (ZIP Code)

Check Applicable Item(s) below:

☒ 1	I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia NEW YORK SUPREME COURT OF THE STATE OF NEW YORK (Name of Court) and am not under a court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law.
☐ 2	I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board:
☐ 3	I am associated with _____, the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.)
☐ 4	Others (Explain fully.)
SIGNATURE 	COMPLETE ADDRESS LAW OFFICES OF DAVID C. BUXBAUM, P.C. 11 BROADWAY, SUITE 1612 NEW YORK, N. Y. 10004
NAME (Type or Print) David C. Buxbaum	TELEPHONE NUMBER (212) 425-4347

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS: David C. Buxbaum
(Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSE IS IN CONNECTION WITH THE FOLLOWING MATTER:

NAME OF PERSON CONSENTING CHOUR, Der-Rong	SIGNATURE OF PERSON CONSENTING 	DATE 9-28-77
--	--	-----------------

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)

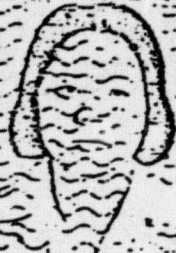
This is to certify that
JIN, HSIEN-CHIAO

REGISTRATION NUMBER:
A36 335 448

DATE OF BIRTH: **02-01-57** F

has been duly registered according to law and was
admitted to the United States as an immigrant at
the port of entry at **NEW YORK** on **02-01-57**

68 SFR061577



Form I-151 (Rev. 7-3-77)

Commissioner of Immigration and Naturalization

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES DEPARTMENT OF JUSTICE
F B I

2. 4. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 8

☆ 2.6.7.3 2.2

September 28, 1977

United States Department of Justice
Immigration and Naturalization Service
26 Federal Plaza
New York, NY 10007

Attn: I-539 Section

Re: CHOUR, Der-Rong
A15 196 857

Dear Sir:

Enclosed herewith please find the followings forms in support of the above-named alien's request for asylum in the United States. --

1. Form I-589
2. Form G-28

We would appreciate your early attention to this matter.

Thank you.

Sincerely yours, _____

LAW OFFICES OF DAVID C. BUXBAUM, P.C.

By: _____ DAVID C. BUXBAUM

DCB:ttc

Enclosures

"C"

No. 978362
RECEIPT FOR CERTIFIED MAIL
 NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

PS Form 3800, Apr. 1976

62-281 Check Per Recd

| | | | |
|---|--|---------------|--|
| SENT TO | | 1-581 Section | |
| STREET AND NO. | | 1-581 Section | |
| P.O., STATE AND ZIP CODE | | 1-581 Section | |
| POSTAGE | | \$ | |
| CERTIFIED FEE | | \$ | |
| SPECIAL DELIVERY | | \$ | |
| RESTRICTED DELIVERY | | \$ | |
| SHOW TO WHOM AND DATE DELIVERED | | \$ | |
| SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY | | \$ | |
| SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY | | \$ | |
| SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY | | \$ | |
| TOTAL POSTAGE AND FEES | | \$ | |
| POSTMARK OR DATE | | APR 1976 | |

PS Form 3811, Nov. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● SENDER: Complete items 1, 2, and 3. "RETURN TO" space on reverse.

1. The following service is requested (check one).
☐ Show to whom and date delivered 25¢
☐ Show to whom, date, & address of delivery 45¢
☐ RESTRICTED DELIVERY.
☐ Show to whom and date delivered 83¢
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery .. \$1.05
 (Fees shown are in addition to postage charges and other fees). AL-281 Check Per Recd

2. ARTICLE ADDRESSED TO:
 INS. 1-581 Section
 26 Federal Plaza
 New York, NY 10007

3. ARTICLE DESCRIPTION:
 REGISTERED NO. 978362
 CERTIFIED NO. INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.
☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:

POSTMARK

CLERK'S INITIALS

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICEREQUEST FOR ASYLUM
IN THE UNITED STATES

INS Office:

Date:

A#

(Execute in Duplicate)

INSTRUCTIONS: This form must be presented to the office of the Immigration and Naturalization Service having jurisdiction over your place of address.

NOTE: If additional space is needed to complete answers, use a separate sheet and identify your answer with the number of the corresponding question.

| | | | | |
|---|--|---|--|---|
| 1. NAME (Last, in CAPS) (First) (Middle) | | | 2. Nationality | |
| CHOUR Der-Rong | | | Chinese | |
| 3. Address in United States | | 4. City & Country of Birth | | 5. Date of Birth (Mo./Day/Year) |
| 41-25 Kissena Blvd. Apt. 3L
Flushing, NY 11355 | | Ta Chen Island; China | | 9-8-46 |
| 6. All other names used at any time | | | | |
| RONG DER CHOUR | | | | |
| 7. Family Members (Names of Spouse and Children) | | Place of Birth | Date of Birth | Country Where Located |
| JIN, Hsien Chiao (wife) | | Keelung, Taiwan | 2-1-57 | CHINA |
| | | | | Included in Asylum Request, if in U.S.? (Yes or No) |
| | | | | No |
| 8. Social Security Number | | 9. Occupation | | 10. ☒ Male
☐ Female |
| 139-58-0525 | | waiter | | |
| 11. Addresses for Past Five Years: | | | | |
| Feb. 19, 74 - Sept. 15, 77 151 Allen St. Apt. 1A New York, NY 10002 | | | | |
| Sept. 1, 72 - Feb. 74, 82, Feng Wei Rd. Chao Chou; Ping Tung; Taiwan ROC | | | | |
| 12. Other Relatives in U.S. | | (Names) | (Address) | Relationship |
| None | | | | Immigration Status |
| 13. Last Arrival in U.S. | | (Date) | Place | Type of Entry |
| Feb. 1974 | | | Baltimore, MD | Crewman |
| United States Visa Issued | | (Date) | Place | Type |
| | | | | |
| 14. Travel Document: | | Type and Number | Date Issued | Valid to: (Date) |
| Passport and Seaman's Document | | | | |
| Restrictions on Travel Document | | Cost | Obtained by:
☐ Self ☒ Other
If "Other" explain: | Any difficulty obtaining?
☐ Yes ☐ No
Explain: |
| | | | INS. | |
| 15. Was Exit Document Required from Home Country? | | 16. Are you admissible to any other country? | | |
| ☐ Yes ☐ No
If "Yes" explain: | | ☐ Yes ☐ No
If "Yes" explain: | | |

17. If you return to your country, for what specific reason do you believe you will be persecuted?
☐ Race ☐ Religion ☐ Nationality ☒ Political Opinion ☐ Membership in a particular social group
☐ Other

18. Have you or any member of your family ever been detained, interrogated, arrested, convicted and sentenced, or imprisoned because of the above?
☐ Yes ☒ No If "Yes", cite instances:

Have you ever been arrested for any other reasons? ☐ Yes ☒ No If "Yes", please list:
but was flown out of China by United States Government.

19. Why in your opinion were the actions cited in Item 18 above taken against you?

I'm not in favor of Communist government.

20. Did you belong to any organization(s) which were considered hostile to the interests of your Home Country?
☐ Yes ☒ No
If "Yes", explain

21. Have you ever expressed political opinions or acted in a manner which was regarded by the authorities as opposed to the interests of your Home Government? ☒ Yes ☒ No If "Yes", explain:

22. If you base your claim for asylum on current conditions in your country, do these conditions affect your freedom more than the rest of that country's population? ☒ Yes ☐ No If "Yes", explain:

My connection with the United States of America because of their flying me out of China made me seriously suspect in China.

23. Have you taken any actions that you believe will result in persecution in your Home Country? ☒ Yes ☐ No If "Yes", explain:

Spoke out against the government and run from China with the help of the American government.

24. Has your family suffered or been intimidated in any way because of your absence or your actions? ☐ Yes ☐ No
If "Yes", explain:

Do not know.

25. Do you base your claim for asylum on the fact that you overstayed your leave abroad? ☐ Yes ☒ No If "Yes", explain:

26. Has your request for asylum become known to the authorities of your Home Country? ☐ Yes ☐ No If "Yes", how has this become known?

I hope not.

What do you think would happen to you if you return?

I would be subject to imprisonment and thought reform.

Why?

Because I left China at the behest and with the help of a foreign government.

27. Have you ever applied for asylum in any other country? ☐ Yes ☒ No If "Yes", explain what happened:

28. Can you provide any documentation or evidence (letters, newspapers, court orders, etc.) in support of your request? ☐ Yes ☒ No
If "Yes", list and attach:

29. Is there any other information relative to your case not covered by the above questions? ☐ Yes ☒ No If "Yes", explain.

30. I do swear (affirm) that I know the contents of this application signed by me and that the statements herein are true and correct.

Des Rong Chan
(Signature of applicant)

Subscribed and sworn to (affirmed) before me this _____ day of _____, A.D. 19____
at _____

(To be executed at time of interview) (Signature of Immigration Officer administering oath) (Title)

Action by District Director:

☐ Granted ☐ Denied

(Interviewing Officer)

(District Director)

Date: _____

Date: _____

NOTICE OF ENTRY OF APPEARANCE AS ATTORNEY OR REPRESENTATIVE

| | |
|------------------------------|-------------------------|
| In re:

CHOUR Der-Rong | DATE
9-28-77 |
| | FILE No.
A15 196 857 |

I hereby enter my appearance as attorney for (or representative of), and at the request of, the following named person(s):

| | | |
|--|---|---|
| NAME
CHOUR Der-Rong | ☐ Petitioner
☐ Beneficiary | ☒ Applicant
☐ |
| ADDRESS (Apt. No.) (Number & Street) (City) (State) (ZIP Code)
41-25 Kissena Blvd. Apt. 3L Flushing, New York 11355 | | |

| | | |
|--|---|--|
| NAME | ☐ Petitioner
☐ Beneficiary | ☐ Applicant
☐ |
| ADDRESS (Apt. No.) (Number & Street) (City) (State) (ZIP Code) | | |

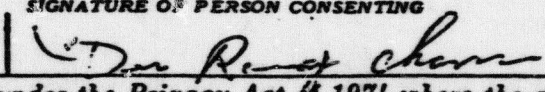
Check Applicable Item(s) below:

| | |
|---------------------------------------|---|
| ☒ 1 | I am an attorney and a member in good standing of the bar of the Supreme Court of the United States or of the highest court of the following State, territory, insular possession, or District of Columbia
<u>NEW YORK</u> <u>SUPREME COURT OF THE STATE OF NEW YORK</u> and am not under a
(Name of Court)
court or administrative agency order suspending, enjoining, restraining, disbaring, or otherwise restricting me in practicing law. |
| ☐ 2 | I am an accredited representative of the following named religious, charitable, social service, or similar organization established in the United States and which is so recognized by the Board: |
| ☐ 3 | I am associated with _____
the attorney of record who previously filed a notice of appearance in this case and my appearance is at his request. (If you check this item, also check item 1 or 2 whichever is appropriate.) |
| ☐ 4 | Others (Explain fully.) |

| | |
|--|--|
| SIGNATURE
 | COMPLETE ADDRESS
LAW OFFICES OF
DAVID C. BUXBAUM, P.C.
11 BROADWAY, SUITE 1612
NEW YORK, N. Y. 10004
(212) 425-4347 |
| NAME (Type or Print)
DAVID C. BUXBAUM | TELEPHONE NUMBER
NEW YORK, N. Y. 10004
(212) 425-4347 |

PURSUANT TO THE PRIVACY ACT OF 1974, I HEREBY CONSENT TO THE DISCLOSURE TO THE FOLLOWING NAMED ATTORNEY OR REPRESENTATIVE OF ANY RECORD PERTAINING TO ME WHICH APPEARS IN ANY IMMIGRATION AND NATURALIZATION SERVICE SYSTEM OF RECORDS: David C. Buxbaum
(Name of Attorney or Representative)

THE ABOVE CONSENT TO DISCLOSE IS IN CONNECTION WITH THE FOLLOWING MATTER:

| | | |
|---|--|-----------------|
| NAME OF PERSON CONSENTING
Der-Rong CHOUR | SIGNATURE OF PERSON CONSENTING
 | DATE
9-28-77 |
|---|--|-----------------|

(NOTE: Execution of this box is required under the Privacy Act of 1974 where the person being represented is a citizen of the United States or an alien lawfully admitted for permanent residence.)

(b) *Assignment.* The district director shall assign a trial attorney to every case within the provisions of §242.16(c) to every case in which an unrepresented respondent is incompetent or under 16 and is not accompanied by a guardian, relative or friend, and to every case in which the special inquiry officer requests assignment of a trial attorney. He shall also assign a trial attorney to every case in which the Commissioner approves the submission of nonrecord information (§242.17(a)). In his discretion, whenever he deems such assignment necessary or advantageous, the district director may assign a trial attorney to any other case at any stage of the proceeding.

[27 F.R. 9646, Sept. 29, 1962, as amended at 32 F.R. 9631, July 4, 1967]

§242.10 Representation by counsel.

The respondent may be represented at the hearing by an attorney or other representative qualified under Part 292 of this chapter.

[22 F.R. 9797, Dec. 6, 1950]

§242.11 Incompetent respondents.

When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the guardian, near relative, or friend who was served with a copy of the order to show cause shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the custodian of the respondent shall be requested to appear on behalf of the respondent.

[22 F.R. 9797, Dec. 6, 1957]

§242.12 Interpreter.

Any person acting as interpreter in a hearing under this part shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the Service, in which event no such oath shall be required.

[22 F.R. 9797, Dec. 6, 1957]

§242.13 Postponement and adjournment of hearing.

Prior to the commencement of a hearing, the district director, acting district director, deputy district director, or officer in charge authorized to issue an order to show cause may grant a reasonable postponement for good cause shown, at his own instance upon notice to the respondent, or upon request of the respondent. After the commencement of the hearing, the special inquiry officer may grant a reasonable adjournment either at his own in-

stance or, for good cause shown, upon application by the respondent or the trial attorney. A continuance of the hearing for the purpose of allowing the respondent to obtain representation shall not be granted more than once unless sufficient cause for the granting of more time is shown.

[28 F.R. 9504, Aug. 30, 1963]

§242.14 Evidence.

(a) *Sufficiency.* A determination of deportability shall not be valid unless it is found by clear, unequivocal and convincing evidence that the facts alleged as grounds for deportation are true.

(b) [Reserved]

(c) *Use of prior statements.* The special inquiry officer may receive in evidence any oral or written statement which is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.

(d) *Testimony.* Testimony of witnesses appearing at the hearing shall be under oath or affirmation administered by the special inquiry officer.

(e) *Depositions.* Either at his own instance or on application of the trial attorney or the respondent, after due notice to all parties, a special inquiry officer may, if satisfied that a witness is not reasonably available at the place of hearing and that his testimony or other evidence is essential, order the taking of a deposition. Such order may prescribe and limit the content, scope, or manner of taking the deposition, may direct the production of documentary evidence, and may authorize the issuance of a subpoena by the officer designated to take the deposition in the event of the refusal or willful failure of a witness within the United States, after due notice, to appear, give testimony, or produce documentary evidence. Testimony shall be given under oath or affirmation and shall be recorded verbatim. The order of the special inquiry officer to take a deposition shall identify the witness and shall specify the title of the officer before whom the deposition is to be taken, shall set forth the immigration district having administrative jurisdiction over the place where the witness is situated but not the time, date, or place for the taking of the deposition, and shall state whether direct and cross-examination shall be by oral examination or written interrogatories or in combination. The Federal Rules of Civil Procedure shall be used as a guide to the ex-

upon applica-
attorney. A
purpose of
representa-
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tent practicable. In the United States, examination of the witness should take place before a special inquiry officer; abroad, preferably before a Service officer in a locality where he is authorized to interview witnesses in expulsion proceedings, elsewhere preferably before a United States consular officer. The witness shall be notified on Form I-260 to appear for examination. Copies of such notices shall be furnished to the parties to the proceeding. Both the respondent's copy and the record of hearing shall reflect advice as to his privilege to examine the witness and to be represented by counsel at such time. The officer presiding at the taking of the deposition shall note but not rule upon objections and he shall not comment on the admissibility of evidence or on the credibility and demeanor of the witness.

[22 F.R. 9797, Dec. 6, 1957, as amended at 32 F.R. 2883, Feb. 15, 1967; 40 F.R. 20816, May 13, 1975]

§242.15 Contents of record.

The hearing before the special inquiry officer, including the testimony, exhibits, applications and requests, the special inquiry officer's decision, and all written orders, motions, appeals, briefs, and other papers filed in the proceedings shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the special inquiry officer. In his discretion, the special inquiry officer may exclude from the record any arguments made in connection with motions, applications, requests, or objections, but in such event the person affected may submit a brief.

[26 F.R. 12112, Dec. 19, 1961]

§242.16 Hearing.

(a) *Opening.* The special inquiry officer shall advise the respondent of his right to representation, at no expense to the Government, by counsel of his own choice authorized to practice in the proceedings and require him to state then and there whether he desires representation; advise the respondent that he will have a reasonable opportunity to examine and object to the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; place the respondent under oath; read the factual allegations and the charges in the order to show cause to the respondent and explain them in nontechnical language, and enter the order to show cause as an exhibit in

the record. Deportation hearings shall be open to the public, except that the special inquiry officer may, in his discretion and for the purpose of protecting witnesses, respondents, or the public interest, direct that the general public or particular individuals shall be excluded from the hearing in any specific case. Depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public.

(b) *Pleading by respondent.* The special inquiry officer shall require the respondent to plead to the order to show cause by stating whether he admits or denies the factual allegations and his deportability under the charges contained therein. If the respondent admits the factual allegations and admits his deportability under the charges and the special inquiry officer is satisfied that no issues of law or fact remain, the special inquiry officer may determine that deportability as charged has been established by the admissions of the respondent. The special inquiry officer shall not accept an admission of deportability from an unrepresented respondent who is incompetent or under age 16 and is not accompanied by a guardian, relative, or friend; nor from an officer of an institution in which a respondent is an inmate or patient. When, pursuant to this paragraph, the special inquiry officer may not accept an admission of deportability, he shall direct a hearing on the issues.

(c) *Issues of deportability.* When deportability is not determined under the provisions of paragraph (b) of this section, the special inquiry officer shall request the assignment of a trial attorney, and shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading.

(d) *Additional charges.* A trial attorney who has been assigned to a case may at any time during a hearing lodge additional charges of deportability, including factual allegations against the respondent. The additional factual allegations and charges shall be submitted in writing and entered as an exhibit in the record. The special inquiry officer shall read the additional factual allegations and charges to the respondent and explain them to him in nontechnical language. The special inquiry officer shall advise the respondent if he is not represented by counsel that he may be so represented and also that he may have a reasonable time within which to meet the additional factual allegations and charges. The

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

MATTER OF

SCHEUR, DEL PR.

FILE A- 15 196 857

IN DEPORTATION

PROCEEDINGS

TRANSCRIPT OF HEARING

Before: EDWARD P. EMANUEL, Immigration JudgeDate: Sept. 4, 1974 Place: New YorkTranscribed by Sylvia Davis At N.Y.Official Interpreter ChungLanguage Mandarin - Chinese

APPEARANCES:

For the Service:

Anthony M. De Gaeto

Trial Attorney

Trial Attorney

New York

Station

For the Respondent:

no one

EXHIBIT

XI

A15 196 857

GPO 961-948

GPO 908-969

1 IMMIGRATION JUDGE TO RESPONDENT THROUGH OFFICIAL INTERPRETER:

2 Q. Sir, is the Chinese language you speak and understand the best?

3 A. Mandarin

4 Q. What is your real name, please?

5 A. Schour Del Rong.

6 Q. The government claims that you are a deportable alien for staying in
7 this country longer than allowed. This hearing is to find out whether
8 or not you are deportable and if you are, then what must be done in
9 your case. Do you understand?

10 A. Yes.

11 Q. You have a right to have a lawyer or other authorized representative of
12 your own selection but without cost to the government. However, you
13 are not required, you are not authorized to have such a person, you
14 can go ahead without one and speak for yourself as you prefer. What
15 will you do about having or not have such a person?

16 A. I will speak for myself.

17 I.J. Alright, the hearing will proceed in that manner.

18 Q. How old are you please?

19 A. 28.

20 I.J. The original Order to Show Cause is received as exhibit 1.

21 Q. Are these claims which the government makes about you each true?
22 First, that you were born in China and that you are a citizen of China?

23 A. Yes.

24 Q. That you are not a United States citizen. Is that true?

25 A. Correct.

26 Q. That you entered the United States about February 10, 1974. Is that True?

1 A. Yes.

2 Q. At that time were you allowed to enter this country temporarily as a
3 crewman, permitted to stay no longer than 29 days?

4 A. Yes.

5 Q. However, did you stay in this country longer than that time without
6 permission from Immigration?

7 A. Right.

8 Q. Because of that do you admit now that the government has the right to
9 deport you?

10 A. Yes.

11 Q. Do you want to be deported or do you want to leave on your own. We call
12 that voluntary departure.

13 A. I will ^{leave} voluntarily.

14 Q. Do you have any close family or relatives who are citizens or who are
15 legal resident of this country?

16 A. No just friends.

17 I.J. Please do not worry merely because of this question, it is asked of
18 everyone. If you have to be deported to which place would you want
19 to be deported?

20 A. I will leave on my own.

21 I.J. I trust that you will leave on your own. However, I must make
22 provision if you do not leave on your own, that you be deported to some
23 place. In the event you have to be deported to which place would you
24 want to be sent?

25 A. To Taiwan.

26 I.J. Mr. De Gaeto, is any request for alternate?

1 T.A. Yes, your honor, Hong Kong.

2 I.J. Mr. Schour, if I give you one month to leave on your own but provide
3 if you do not leave by that time, that you be deported. Is such a
4 decision, satisfactory to you?

5 A. Please your honor I haven't been here too long yet and if you will give
6 me a little bit more time, I can really buy my own ticket and go.

7 I.J. You have already been here about 5 or 6 months longer than allowed.

8 If I give you the one month are you saying that you will be out by the
9 time required of you?

10 A. I have a lot of economic problems at home and that is why I left the ship.

11 I.J. Sir, if you wouldn't leave the United States by the time now required,

12 which will be one month, then I must order that you be deported. Do
13 you want to be ordered deported or are you saying that you will be out
14 by one month, unless that time be extended by Immigration?

15 A. In a month I might not be able to buy my own ticket. If you will give
16 me a little bit more time.

17 I.J. I will not give you more time. If you show that you have been diligent-
18 ly able to buy a ticket but cannot do so, then come back here a few days
19 before the month is up and maybe if you have a good reason an extension
20 of time will be then given to you. Do you understand?

21 A. Alright.

22 I.J. However, I cannot give you any assurances of any extension because at
23 that time I have nothing to do with that. Do you understand?

24 A. I understand.

25 I.J. I will give you as I said one month to leave voluntarily. If you do
26 not leave by that time unless the time be extended, here is my order

1 that you be deported to Taiwan and if not acceptable there, then to
2 Hong Kong. Are you saying that you be satisfied with such a decision?

3 A. I understand the Taiwan, peace.

4 Q. In Hong Kong would you be harmed for any reason?

5 A. I don't want to go to Hong Kong.

6 I.J. Here is my decision. The interpreter will translate it to you. This
7 is the one which takes effect and also tell him about where he goes.
8
9
10
11

12 I hereby certify that to the best of my knowledge and
13 belief the foregoing pages numbered 1 through 4
14 are a complete and accurate transcript of the above-
15 described proceedings.

16 Sylvia Davis
Signature
17 Interpreter
Title
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TRANSCRIPT OF HEARING

United States Department of Justice — Immigration and Naturalization Service

IMMIGRATION JUDGE TO RESPONDENT (Through official interpreter).

Q. Sir is Chinese the language you speak and understand best?

A. Mandarin.

Q. What is your real name please.

A. Chour Der Rong

Q. The Government claims that you are a deportable alien, staying in this country longer than allowed. This hearing is to find out whether you are deportable and if you are then what must be done in your case.

Do you understand?

A. Yes.

Q. You have a right to have a lawyer or other representative of your own selection without cost to the Government. However, you are not required you are not forced to have such a person, you can go ahead without one and speak for yourself, if you prefer. What will you do about having or not having such a person?

A. I will speak for myself.

I.J. Alright, we will proceed in that manner.

I.J. Q. How old are you, please.

A. 28.

Q. The Original Order to Show Cause is received as exhibit #1.

Are these claims, ^{that the Government makes about you each true.} first that you were born in China

and a citizen of China.

A. Yes.

Q. That you are not a U.S. citizen? Is that true?

A. Correct.

Q. That you entered the United States about Feb. 10, 1974. Is that true?

-1-

TRANSCRIPT OF HEARING

United States Department of Justice - Immigration and Naturalization Service

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A. Yes.

Q. At that time were you allowed to enter the country temporarily as a crewman to stay no longer than 29 days. Is that true?

A. Yes.

Q. However, did you stay in this country beyond that time without permission from Immigration?

A. Yes.

Q. Because of that do you admit that the Government now has the right to deport you?

A. Yes.

Q. Do you want to be deported or will you leave on your own. We call that voluntary departure.

A. I will leave voluntarily.

Q. Do you have any close family or relative who are legal residents of this country?

A. No, just friends.

Q. Please do not worry merely this question must asked of everyone, if you have to be deported to which country do you wish to be sent?

A. I will leave on my own.

Q. I trust that you will leave on your own. However, I must make provision if you do not leave ^{you have to be deported.} on your own., To which country do you wish to be sent?

A. Taiwan.

Q. If I give you one month to leave on your own, Mr. Chour, to provide if you do not leave by that time you will be deported, is such a decision satisfactory to you?

A. Please your honor, I haven't been here too long yet if you will give me

1 a little more time I can really buy my own ticket and go.

2 I.J. You have already been here 5 or 6 months longer than allowed. If I
3 give you one month, are you saying that you will be out by the time that
4 is required of you? Is that what you are saying?

5 A. I have a lot of economic problems at home and that is why I left
6 the ship.

7 I.J. If you do not leave ^{the United States} the time allowed which is one month, then I must
8 order that you be deported.

9 A. In a month I might not be able to buy my own ticket, if you will give
10 me a little bit more time.

11 I.J. I will not give you more time. If you show that you are diligently
12 been able to buy a ticket but cannot do so, then you come back here a
13 few days before the month is up. Maybe, if you have a good reason
14 an extension at that time will be given. Do you extend?

15 A. Alright.

16 I.J. However, I cannot give you any assurances of an extension because at
17 that time I will have nothing to do with that. Do you understand.

18 A. I understand.

19 I.J. Mr. De Gaeto is any request alternatively.

20 A. Yes, your honor, Hong Kong.

21 I.J. I will give you as I said one month to leave voluntarily. If you don't
22 leave by that time, unless the time is extended, here is my order that
23 you be deported to Taiwan. If you are not accepted there, then to
24 Hong Kong. Are you saying that you are satisfied with such a decision?

25 A. I understand ^{the} Taiwan piece.

26 I.J. In Hong Kong would you be home for any reason?

A. I don't want to go to Hong Kong.

I.J. Here is my decision. The interpreter will translate it to you.

This is the one which takes effect.

The hearing is closed.

I hereby certify that to the best of my knowledge and belief the foregoing pages numbered 1 through 1 are a complete and accurate transcript of the above-described proceedings.

Alfred Davis
Signature

Interpreter
Title

STATE OF NEW YORK)
COUNTY OF NEW YORK)

ss.:

AFFIDAVIT OF SERVICE

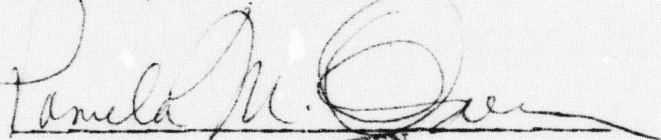
GEORGE KARL ROSENSTOCK, being first duly sworn, deposes and says:

1. Deponent is not a party to the action, is over 18 years of age and resides at 780 Riverside Drive, New York, New York.

2. On October 17, 1977, deponent served the within "Brief in Support of Motion for Reconsideration and Suggestion for Rehearing En Banc" upon Robert B. Fiske, Jr., Esq., United States Attorney for the Southern District of New York, attorney for appellees herein, at One St. Andrew's Plaza Annex, New York, New York 10007, the address designated by said attorney for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


GEORGE KARL ROSENSTOCK

Sworn to before me this
17th day of October, 1977.


PAMELA M. OWEN
NOTARY PUBLIC, State of New York
No. 24-11-1037
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1978